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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/672,851
Filing Date: September 26, 2003
Appellant(s): LOW ET AL.

Charles W. Griggers
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/21/2009 appealing from the Office action mailed 08/25/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Blizzard Entertainment, Starcraft - game user manual, copyright 1998 Blizzard Entertainment

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

101 Rejection:

1. Claims 1, 3-9 and 11 are rejected under USC 101, the claimed invention is directed to non-statutory subject matter. In order for a claimed process to be considered statutory it must be: (1) tied to a particular machine or apparatus, or (2) transform a particular article into a different state or thing. The use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility; the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity; and the transformation must be central to the purpose of the claimed process. Claims 1 and 11 as recited do not act upon a physical object so as to provide a transformation of that object into a different state or thing. Claims 1 and 11 recites "simulating activities", "simulated creature undergoing a change in environment", neither the simulation nor the creature undergoing change physically transforms a particular article into a different state or thing as the simulation and the creature are both intangible abstraction. The method as recited also does not

provide a critical tie to a particular machine or apparatus, although the claims recite "simulation observable by a user" and "less computationally intensive", the claims do not provide a positive recitation of any particular machine or apparatus, the observation as claimed are merely nominal recitation and do not recite nor require the use of any specific machine or apparatus.

Claims 3-9 are also rejected for their dependency of claim 1 for failing to correct these deficiencies and therefore rejected for the same reason.

102(b) rejection:

2. Claims 1, and 3-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Starcraft (game manual provided with copyright date of 1998).

Re claim 1, Starcraft teaches a method of simulating the activities of a plurality of creatures (page 12, Terran, Zerg or Protoss), the method comprising:

simulating activities of the plurality of creatures at a first mode (page 13: mini-map, the mini map provides a bird's eye view of the main screen and allowing the player to see the entire battlefield at once, the buildings and units [plurality of creatures] appear in different shapes and colors showing the interaction between the creatures) of simulation observable by a user, wherein the first mode of simulation is less detailed and less computationally intensive than a second mode of simulation (page 13: mini map shown on the bottom left of the figure, this is a bird's eye view of your main screen which allows you to see the entire battlefield at once, compared to the main screen, the mini-map is less detailed and less computational intensive);

and simulating an activity of one of the plurality of creatures at the second mode of simulation observable by the user (pages 15-19: the main screen provides the player with detailed activities of the creatures including construction of buildings, exploration of the fog of war [un-explored areas], creation of units, collection of resources, and combat), wherein results of the simulation at the second mode of simulation are used to provide a simulation of the plurality of creatures at the first mode of simulation (page 13, as a result of the interaction of the main screen, the mini-map will change accordingly, e.g. the mini-map reveals the same view of the main screen in less detailed version, when the unit is created or destroyed in the main screen, subsequent result would also be shown in the mini-map).

wherein said second mode of simulation is utilised in response to one or more of said plurality of creatures simulated by said first mode undergoing a change in environment (the main screen is utilized in response to the plurality of creatures simulated in the mini-map when the player detects activities on the mini-map and switching to a more detailed view of the specific region on the map - page 14, hide terrain – this button toggles whether or not terrain is displayed in the mini map, hiding terrain may make it easier to spot enemy units; page 13, each of the units and buildings, resources appear in different colors and shapes easily distinguishable for the player; page 18, viewing the maps using the mini map; when the mini map identifies enemy units, select any area on the mini-map and immediately jump to that location - the user switches the view of the main screen to the particular part of the map identified by the mini map), the second mode being utilised to simulate the activity of said one or more of said plurality of creatures undergoing the change in environment (as the unit encounter enemies, the player can go to the more detailed main screen of the specific region on the map to command the units in a detailed

manner - page 19, move, stop, attack, patrol, hold positions; page 20, figure provided on the bottom of the page simulate the activity of one or more said creatures).

Re claim 3, change in environment comprises a creature undergoing at least one of: fighting (page 19, attack); eating (page 17, gathering resources); interacting with another creature (page 39, SCV can be used to repair damaged buildings and mechanical units to quickly bring them back to full capacity); reproducing (page 56: each larva contains within it the genetic makeup of every other Zerg breed. A young hive will only have the genetic code for the most basic Zerg breeds, such as the Drone, but as it grows and develops new structures, the larvae can expand their library of genetic strains); sensing another creature (page 20, patrol); encountering another creature; moving to a new terrain type (page 19, move – allow the player to select the destination of the selected unit); and altering the environment (page 17, gathering resources, page 15, construction of buildings);.

Re claim 4, the second mode is invoked at the start of the simulation so as to determine starting parameters of each creature (showing of second mode at the start of the game).

Re claim 5, second mode is utilised to determine at least one parameter affecting the activity of the simulated creature, said parameter being subsequently utilised by the first mode of simulation (page 56: Larvae will enter a pupal state and begin the metamorphosis into whichever breed is required by the hive, subsequently showing the activities and parameters on the first mode of

simulation by addition of different shapes and colors representing the different simulated creatures).

Re claim 6, when the method changes from utilising the second mode to the first mode, at least one parameter relating to said creature simulated by the second mode is stored for use by a later iteration of the second mode (page 18: changing the viewing of the maps, the units of the second mode is moved in the mini-map, when the player requires a more detailed view of the units, the player can go back to the main screen).

Re claims 7-9, wherein said parameter comprises at least one of creature mass (page 19, wireframe), creature energy (hit points), creature strength (equipment showing weapons and armor), creature biochemical levels (page 36, stimpack – allowing infield chemical delivery to boost the ability of the units); creature movement parameters (pages 19 and 20, move, stop, attack, patrol, and hold), creature speed (page 36, stimpack – provides the user with greatly increased speed and reflexes); and creature rate of turn (page 56, Burrow – the drones have shown the ability to burrow into the ground when under attack, this technique allows them to remain concealed from their enemies while regenerating).

Re claims 10 and 11, a recordable medium having recorded thereon computer readable code, wherein the computer readable code (page 4, system requirements – hard drive) is adapted to:

simulate activities of a plurality of creatures at a first mode of simulation observable by a user, wherein the first mode of simulation (mini-map) is less detailed and less computationally intensive than a second mode of simulation (simulating different activities on the main screen); and simulate an activity of one of the plurality of creatures (different races within the game - Terran, Zerg, or Protoss) at the second mode of simulation observable by the user in response to one or more of said plurality of creatures simulated by said first mode undergoing a change in environment (pages 14, 18 and 19, as explained in claim 1 above, the mini map reveals the location of the enemy, the user can select any area on the mini map and immediately jump to that location), wherein results of the simulation at the second mode of simulation are used to provide a simulation of the plurality of creatures at the first mode of simulation for the new change in environment (activities of the main screen translated into the mini-map).

(10) Response to Argument

Argument against the rejection under 35 USC § 101

The appellant asserts that the claims are statutory and meets the requirements of § 101, the appellant's argument is presented on pages 5 and 6.

Starting on page 5, the appellant asserts that the claims are tied to the particular machine with the recitation of "wherein the first mode of simulation is less detailed and less computationally intensive than a second mode of simulation; and simulating an activity of one of the plurality of creatures at the second mode of simulation observable by the user, wherein results of the simulation at the second mode of simulation are used to provide a simulation of the plurality of creatures at the mode of simulation", the appellant asserts that the recited claim language

provides a higher level of computation intensity, and therefore the method steps are being performed by a computer.

The examiner previously explained in the rejection, in order for a claimed process to be considered statutory it must be tied to a particular machine or apparatus. There is no positive recitation of any particular machine or apparatus used for the method claimed. The statutory requirement further requires the use of specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility, the present claim language fails to impose meaningful limits on the claim's scope, the claim language of "less-computational" and "simulating an activity" are merely nominal recitations and do not impart meaningful limitations on the scope of the claim, as they are related to the intended field of use of the simulation method and do not provide any meaningful limits of a particular machine tied to the claimed process.

In response to the appellant's assertion that the scope of the claim should be determined in light of the specification as it would be interpreted by one of ordinary skill in the art. The examiner respectfully submits that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims as presented do not provide any process tied to a particular machine or apparatus.

Argument against the rejection under 35 USC § 102(b):

The appellant asserts that the reference Starcraft does not provide the teachings of the claim language as it fails to use results from one mode of simulation to provide a simulation in another mode, since both simulations run concurrently. The appellant provides that the result of the high-detailed simulation would not be used to produce a lower-detailed simulation. The appellant's argument is presented on pages 7 through 10.

The appellant emphasized that because the computer game utilizes a mini-map providing an overview of a location of space vehicles in relation to its distant surroundings, where the main display segment shows the space vehicle in relation to its immediate surroundings, therefore both simulations are run concurrently and as a result, the result from a high-detailed simulation would not be used to produce a lower-detailed simulation.

The examiner agrees with the appellant's interpretation of the mini-map of Starcraft to be running concurrently with the more detailed simulation. However, the appellant has seemingly misunderstood the significance of the relationship between the main screen and the mini map. The concept of the mini-map and the main screen is not one of a large map and a magnifying glass viewing a specific region of the entire map. Instead the mini map as provided is a representation of the entire map, the mini map has different shapes and colors representing each of the features in the game (e.g. buildings, units and resources). The player is interacting with the different creatures in the main screen by constructing buildings, command the units to attack each other and collecting resources to support spawning of buildings and creatures. The mini

map is used by the player to easily and quickly identify specific interests and able to get the player a more detailed version of the specific region on the larger main screen. Therefore although it is true that both simulations are run concurrently, however the main screen provides more details and interactions for the player engaged in the game.

Provided in the rejection above, the examiner explained that as the units and buildings are created a representation of the units and buildings are also created in the mini map. Each of the creation of the buildings and units, the interaction between the units and the buildings are not completed instantaneously, each of the creation requires a time period, and the progress of completion is shown in the status display area (Starcraft, bottom of page 14). As a result of the interaction (fighting between the different units having different hit points, attack and defense points), creation of units and buildings, the representation of each of the units and buildings are displayed in the mini map. Therefore not only does the main screen and the mini map run concurrently, the detailed main screen also provides its result to be used to produce a lower detailed simulation.

The appellant following the same logic asserts that it would not have been possible to utilize second mode of simulation in response to one or more of said plurality of creatures simulated by the first mode undergoing a change in the environment because of the concurrently simulating environment. The appellant acknowledges that the main screen provides a much detailed view of a specific area of the whole map, when the creature changes environment, moving to a different region of the map not visible to the player on the main screen, the player can select a different

region on the map to be displayed on the main screen as a result of identifying different interests on the mini map. Therefore Starcraft teaches of providing a second mode of simulation in response to one or more of said plurality of creatures simulated by first mode undergoing a change in environment.

The independent claims 1, 10 and 11 requires two different modes of simulation, the first mode of simulation observable and less detailed and less computationally intensive than a second mode of simulation. The first mode represented by the mini map provides an overview of the entire map area, and the second mode represented by the main screen in the game only provides part of the map to the player. When the player interacts with the different creatures in the second mode, different activities result in changes in the environment. These results are provided to the mini map as a representation of the creatures, buildings and resources in different color and shape. Due to the large size of the map, the player is only provided with a partial view of the map. As the creatures venture into other areas of the map, change in environment, the representation is provided in the mini map. By selecting the different areas the player utilizes the mini map to switch to the most pertinent view on the main map in order to better interact with the different creatures in the game. Therefore even though two different simulations are provided concurrently, the second mode still provides its result to the first mode, and the player would utilize the change in environment of the different creatures in the first mode to find the best suitable viewpoint in the second mode of simulation. . Thus Starcraft is a proper reference under 35 USC § 102(b), fully anticipates the claimed invention, and the rejection based upon such should be sustained.

Each of the additional arguments provided are similar to those presented earlier by the appellant, the arguments have been addressed above and not repeated herein.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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